IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 170 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAVID ALIAS JAID ALIAS JAHID MOHMAD MOM.SHAIKH @ MITHAIWALA
Versus
STATE OF GUJARAT

Appearance:
MS SUBHADRA G PATEL for Petitioner
MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT
Date of decision: 11/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive detention dated 6th October, 1998 made by the Commissioner of Police, Surat City under the powers

conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, `the Act'].

3. The petitioner is alleged to be a `dangerous person' within the meaning of Section 2 (c) of the Act. Three offences punishable under Chapter XVII of the Indian Penal Code have been registered against the petitioner and are pending trial. In each of the said offences stolen articles were recovered from the petitioner. Besides, two persons have given statements in respect of the nefarious activities of the petitioner, and more particularly, with respect to the incidents that occurred on 5th July, 1998 and 20th August, 1998 respectively. In both the said incidents, the petitioner is alleged to have beaten the witnesses who have not surrendered to the demands made by the petitioner. The petitioner and his associates are also alleged to have used lethal weapons for issuing threats and have intimidated the people gathered on the spot of incident, by using lethal weapons, as a result, terror and feeling of insecurity was created amongst the people which affected the peace and tranquillity of the area.

4. It is contended that the impugned order of detention has been made long after the registration of the last of the offences against the petitioner and even after his release on bail. The last of the offences has been registered against the petitioner on 27th June, 1998 in respect of which, he was arrested and released on bail on 3rd July, 1998. The statements of witnesses were recorded on 9th September, 1998 which were verified by the detaining authority on 5th October, 1998 and the impugned order has been made on 6th October, 1998. This delay has not been explained and has snapped the link between the cause of action and the order. The order made after such unexplained long time is vitiated. I am unable to agree with this contention. It would not be out of place to mention here that even after his release on bail on 3rd July, 1998, the petitioner has continued his nefarious activities and the incidents in question occurred on 5th July, 1998 and 20th August, 1998. The statements have been recorded on 9th September, 1998, a proposal was made to the detaining authority on 15th September, 1998. Thereafter, the witnesses were summoned before the detaining authority and after the detaining authority having verified the statements made by the witnesses, on 5th October, 1998, the impugned order has been made. Though, it cannot be said that the impugned order has been made immediately after or soon after the statements of witnesses were recorded, the time lapse is

not such which would snap-away the link between the cause of action and the order of detention.

5. It is next contended that the petitioner ought to have been informed about the names and other particulars of the witness without which the petitioner could not make an effective representation, thereby, the petitioner's constitutional right has been infringed. It is submitted that the identity of the witnesses has been withheld by wrongly invoking the privilege conferred under Section 9 (2) of the Act. It is further contended that even otherwise, the credibility of the witnesses and the statements made by them have not been verified by the detaining authority and the subjective satisfaction recorded on the basis of such statements is, therefore, vitiated. This contention also requires to be rejected. Both the witnesses have agreed to give statement against the petitioner only on assurance of anonymity. Unless such an assurance were granted, the witnesses would not have given statements in respect of the petitioner's nefarious activities. Though the detenu has a right to the materials which is relied upon against him, the detaining authority has to exercise its discretion with respect to the identity of the witnesses, keeping in view the larger public interest. Unless the power conferred under Section 9 (2) of the Act were exercised, the information would not have been received by the detaining authority and no action could have been taken against the petitioner for want of adequate information. Besides, the detaining authority had also summoned the witnesses before him and had satisfied himself with regard to the genuineness of the fear expressed by the witnesses. In my view, therefore, the detaining authority has rightly exercised the privilege conferred under Section 9 (2) of the Act. In respect of the genuineness of the statements given by the witnesses, the detaining authority in his affidavit has categorically stated that he had examined and considered all the materials on record and had also personally verified the veracity, genuineness and correctness of the statements made by the witnesses. In view of the statement made on oath, the contention requires to be rejected.

6. It is next contended that in any view of the matter, the petitioner's activities can be a problem of law and order, however, the same cannot be said to be detrimental to the maintenance of public order. I am unable to agree with this contention either. As stated hereinabove, the petitioner is maintaining lethal weapons and has been using it in public, with a view to extending threats to the members of the people and with a view to

cowing down the people to submit to his demands. In the two incidents narrated by the concerned witnesses, the petitioner is alleged to have created terror and feeling of insecurity in the concerned area. His activities thus cannot be said to be mere breach of law and order and certainly shall have an adverse effect on the public tranquillity and even tempo of life.

7. At last, it is contended that the detaining authority has supplied extraneous material to the detenu alongwith the grounds of detention. It is contended that the petitioner was named as one of the co-accused person in the offence registered as CR No. 53 of 1993 at the time when the petitioner was minor. The factum of his involvement in the said offence has not been taken into consideration by the detaining authority for recording his subjective satisfaction. However, the FIR lodged in this respect has been furnished to the petitioner alongwith the grounds of detention. In support of her contention, she has relied upon the judgment in the matter of Salamkhan Bachchekhan Pathan v. Commissioner of Police & Ors., [1988 (1) GLR 450]. On the facts of the case, the said judgment shall have no applicability. In the said matter, the detaining authority was alleged not to have considered the material and vital information in respect of the detenu. The facts in the present case are to the contrary. In my opinion, supplying some material which has not been considered by the detaining authority and otherwise not vital or relevant shall not vitiate the subjective satisfaction recorded by the detaining authority nor should it make the order of detention illegal or invalid.

7. No other ground is urged before me. The petition is dismissed. Rule is discharged.

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Prakash*